

MOTOR VEHICLES: A motor-power-assisted bicycle that is capable
BICYCLES: of propelling itself on horizontal planes but
MOTORCYCLES: not fully capable of propelling itself on up-
DEPT. OF REVENUE: grades is a motor vehicle, and this is a
LICENSES: question of definition under Section 301.010,
rather than classification under Section
301.070, RSMo 1959.

OPINION NO. 422-1961
38 -1962

February 15, 1962

Honorable David A. Bryan, Supervisor
Motor Vehicle Registration
Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. Bryan:

This is in reply to your recent request for an opinion from this office in regard to the questions contained in the following letter:

"Frequently we are confronted with questions as to whether or not a motor-power-assisted bicycle that is capable of propelling itself on a horizontal plane but not fully capable of propelling itself on upgrades, is a motor vehicle.

"We respectfully request your opinion on this matter, inasmuch as there is a probability that it is a question of definition under Section 301.010 rather than classification under Section 301.070."

We first determine whether or not the above described motor-power-assisted bicycles are motor vehicles within the meaning of Chapter 301, RSMo 1959. Section 301.010 in part provides:

"As used in chapter 301 and sections 304.010 to 304.040 and 304.120 to 304.570, RSMo, the following terms mean:

* * * *

"(15) 'Motor vehicle', any self-propelled vehicle not operated exclusively upon tracks, except farm tractors;

* * * *

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"(28) 'Vehicle', any mechanical device on wheels, designed primarily for use on highways, except those propelled or drawn by human power, or those used exclusively on fixed rails or tracks."

Further, Section 301.010 (13), RSMo 1959, defines "motorcycles" as "motor vehicles operated on two wheels".

In your request you state that this is a motor-power-assisted bicycle capable of propelling itself on horizontal planes. Since the bicycle is propelled by a motor it would fall within the definition of "motor vehicle" under Section 301.010 (15) unless the amount of self propulsion removes it from that definition.

In dealing with the problem, we will look to what this office has held in the past in regard to similar mechanical devices on wheels, designed primarily for use on highways. In an opinion under date of September 30, 1941, directed to Captain W. J. Ramsey, this office held that when a bicycle called "Push-A-Bike" is fitted with a gasoline motor, which motor rides on its own tire, that said vehicle when so operated and driven on the highways of this State becomes a motor tricycle or motor vehicle within the meaning of what is now Chapter 301, RSMo 1959, requiring the "Push-A-Bike" to be registered together with a payment of a registration fee, and further that said "Push-A-Bike" comes within the meaning of Motor Vehicle Law, making it an offense for any person under the age of sixteen years to operate a motor vehicle on the highways of this State. A copy of this opinion is enclosed herewith.

In an opinion dated September 7, 1945, to Honorable Hugh Waggoner, Superintendent of the Missouri State Highway Patrol, this office held that a motor scooter is a motor vehicle, that it must be registered and licensed and the Drivers License Law applies to persons operating such. A copy of this opinion is also enclosed herewith.

In an opinion under date of September 10, 1959, to the Honorable Charles H. Sloan, this office held that go-carts are motor vehicles within the Missouri statutes, regulating the licensing and driving of motor vehicles if they are driven upon the highways. Further, that as "motor vehicles", "go-carts" must meet the statutory licensing and equipment regulations for motor vehicles if they are to be driven upon the highways. A copy of this opinion is also enclosed herewith.

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All of these mechanical devices are similar to the one at issue. These determinations were made, however, without regard to whether or not these vehicles would have been motor vehicles if they were not fully capable of propelling themselves on indefinite "upgrades", though they were self propelled on horizontal planes.

Section 301.010 (15) defines a "motor vehicle" as "any self-propelled vehicle not operated exclusively upon tracks". The vehicle at issue is not operated on tracks.

"Self-propelled" was defined in Webster's Second International Dictionary as "containing within itself the means for its own propulsion". Webster's Third International Dictionary, Unabridged, defined "self-propelled" as "propelled by its own motor, * * * moved forward by one's or its own force or momentum".

No case has been found defining the word "self-propelled" or where the issue involved a question of whether the vehicle was self-propelled or not.

In regard to construing words and phrases on any statute, Section 1.090, RSMo 1959, states:

"Words and phrases shall be taken in their plain or ordinary and usual sense, * * *"

State of Missouri ex rel Wright v. Carter, 319 S.W. 2d 596, at page 599 states:

"* * * The court should ascertain the legislative intent from the words used if possible and should ascribe to the language used its plain and rational meaning. * * *"

The Supreme Court of Missouri, in State v. Cox, 268 S.W. 87, in construing the Motor Vehicle Law of 1921, which has ultimately become Chapter 301, RSMo 1959, stated at page 90:

"* * * While the above act incidentally, is intended to raise revenue, yet it is essentially a police regulation of the highest type, in which the public welfare was primarily considered in its enactment." (Emphasis supplied)

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In State v. Ridinger, 266 S.W. 2d 626, the Supreme Court of Missouri, in interpreting the term "motor vehicle" as defined by Section 303.010, RSMo 1959, stated at page 632:

"[5] 'Motor vehicle' is a generic term. The curious may read of the origin, development, modern acceptance, use and application of the term in 60 C.J.S., Motor Vehicles, §1, p. 109, and in Jernigan v. Hanover Fire Ins. Co., 235 N.C. 334, 69 S.E. 2d 847. It is a matter of common knowledge and every day observation that on the used car and outdoor show and display lots of the State, on lots adjoining garages, and in countless yards and various premises in this State, both rural and urban, stand un-numbered thousands of motor vehicles of every description, many in various conditions of disrepair. But few of them stand ready to operate or could otherwise qualify as 'self-propelled,' but they nonetheless are 'motor vehicles.' Clearly it was not the legislative intent to exclude such motor vehicles from the protection of the 'tampering' statute. If such had been the legislative intention, it would have been simple enough for the law-making body to have added to the statute a proviso in appropriate words to the effect that Section 560.175 was not applicable to motor vehicles not in good running or operating condition or repair and not ready to be driven away."

The Court further stated:

"Manifestly it was the design, mechanism, and construction of the vehicle, and not its temporary condition, that the Legislature had in mind when framing the definition of a motor vehicle. Neither the authorities nor sound logic admit of a different conclusion." * * *

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The vehicle at issue is admittedly a mechanical device on wheels, equipped with a motor, designed primarily for use on highways, fully capable of propelling itself on horizontal planes. This type of vehicle can and does cause accidents on highways. This motor-power-assisted bicycle, which has the "design, mechanism and construction" of a motor vehicle, is regulated and is subject to the provisions of Chapter 301, RSMo 1959, as a motor vehicle.

The words "self propelled" should be construed reasonably in its usual and accepted sense. Did the legislature intend the words to mean completely, wholly or fully capable of propelling its self upgrade. Such a meaning would make the definitions of motor vehicles ambiguous and indefinite. If so, what would the degree of "upgrade" be that a vehicle would have to climb in order to be a motor vehicle. Certainly "upgrade" is not defined or made reference to by the statutes involved herein. Further, it is common knowledge that even among the different types of automobiles, which certainly are motor vehicles, there is a wide range of the degree of "upgrade" that the various types of automobiles can effectively climb, thereby making the determination of a standard difficult if not impossible even for legislative purposes.

The Missouri Supreme Court in State v. Mosman, 315 S.W. 2d 209, at page 211 states:

"When called upon to construe a statute, the court's prime duty is to give effect to the legislative intent as expressed in the statute. To this end we are guided by certain well established and recognized rules, among which are the following: (a) The object sought to be obtained and the evil sought to be remedied by the Legislature; (b) the legislative purpose should be assumed to be a reasonable one; (c) laws are presumed to have been passed with a view to the welfare of the community; (d) it was intended to pass an effective law, not an ineffective or insufficient one; * * *" (Emphasis supplied)

The legislature intended to pass statutes with effective and sufficient definitions therein; we conclude that the term

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"self-propelled" does not mean wholly or fully self propelled.

From the foregoing, we are of the opinion that the device at issue is a "vehicle" and is a "motor vehicle" subject to the provisions of Chapter 301, RSMo 1959.

In regard to the question proposed in your second paragraph of said letter, as to whether this is a question of definition under Section 301.010, rather than classification under Section 301.070, Section 301.070 in part provides:

"1. In determining fees based on the horsepower of vehicles propelled by internal combustion engines, the horsepower shall be computed and recorded upon the following formula established by the National Automobile Chamber of Commerce: Square the bore of the cylinder in inches multiplied by the number of cylinders, divided by two and one-half."

* * * *

"5. The decision of the director as to the type of motor vehicles and their classification for the purpose of registration and the computation of fees therefor shall be final and conclusive." (Emphasis supplied)

It should be observed that this section refers to and assumes the vehicles described therein are motor vehicles. Under Subsection 5, the Director is authorized for the purpose of registration and computing the license fees to be paid on each particular motor vehicle, to determine its "type" not determine whether a device is a motor vehicle.

Likewise the determination by the director of the "classification" refers to classification of motor vehicles covered by the chapter not the determination of the question of whether or not a particular device is or is not a "motor vehicle". The legislature by its definitions has determined what devices are motor vehicles. The director is charged with the duty of classifying motor vehicles for the purpose of registration and computation of fees. This purpose does not include the duty to decide whether a device is a motor vehicle.

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CONCLUSION

It is the opinion of this office that a motor-power-assisted bicycle that is capable of propelling itself on horizontal planes but not fully capable of propelling itself on upgrades is a motor vehicle.

Determination of whether a device is a motor vehicle is a question of definition under Section 301.010 and not a problem of classification for the director under Section 301.070, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul A. Slicer, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

PS:BJ